

REMARKS/ARGUMENTS

Claims 1, 3, 5, 7, and 9 are pending in the application and are currently amended. Claims 2, 4, 6, 8, 10, and 11 have been cancelled.

Rejections under 35 U.S.C. §102.

The Office Action has rejected claims 1-11 under 35 U.S.C. §102(e) as being anticipated by U.S. Patent No. 6,360,360 titled "Object-Oriented Compiler Mechanism for Automatically Selecting Among Multiple Implementation of Objects" (hereafter, "Bates"). Applicants respectfully traverses these rejections.

Rejections under 35 U.S.C. §103

The Office Action rejected claims 1-11 as unpatentable over U.S. Patent 6,324,619 (Raverdy et al) in view of Blake et al (U. S. Patent. 5,752,038, hereafter Blake). The Applicant respectfully disagrees.

The Office Action admits that Raverdy neither teaches nor suggests the claim limitation of instrumenting of a program component to gather cost-related information during at least a partial run of the program. Further, the Office Action does not show the presence of this step in the Blake reference.

Blake relates to a method and system for determining an optimal placement order for code portions within a module to improve locality of reference and reduce the working set of the module. Blake discloses the reduction of the working set of a module. The optimal placement order for code portions within a module reflects the concurrency of usage for code portions during execution of the module. That is, all code portions which execute within a certain period of time are placed in close proximity to each other within the executable module. This method of "time ordering" reduces the working set of a module

In the Office Action of November 17, 2004, the Examiner stated that the Blake reference discloses "instrumenting said component to gather cost-related information during at least a partial run of said program" and points the Applicant to col. 2 lines 45-47 which purportedly

describes such a step. A read of the Blake passage does not describe such a step. The cited Blake passage reads:

“When determining the optimal placement order for each code portion, the present invention executes an instrumented version of the module to collect execution data for each code portion, analyzes the execution data to determine the optimal placement order for each code portion, and links the code portions according to the determined optimal placement order. The instrumented version of the module contains instructions that, when executed, cause execution data to be recorded. When the code portions are linked according to the determined optimal placement order, the working set for the module is reduced, thereby lessening page and cache misses and improving overall system performance.”

Thus, the cited Blake passage makes no mention of instrumenting of a program component to gather cost-related information during at least a partial run of the program, as defined in the independent claims of Applicant’s invention. The Applicant describes in detail the cost functionality of the Applicant’s invention in the specification, namely on page 15 lines 10-20 (see excerpt above).

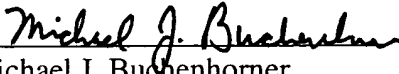
Thus, the Blake reference also does not disclose the instrumenting of a program component to gather cost-related information during at least a partial run of the program, as claimed in Applicant’s invention. For this reason, neither the Blake reference, the Raverdy reference or any combination of the two disclose, teach, or suggest the aforementioned element of independent claims 1, 5 and 9 - namely, the instrumenting of a program component to gather cost-related information during at least a partial run of the program. Thus, the Examiner’s rejection of these claims has been traversed and the Applicant respectfully requests that the rejection is withdrawn. The Applicant further requests allowance of these claims.

Further, dependent claims 2-4, 6-8 and 10-11 depend from and include all of the limitations of independent claims 1, 5 and 9. For this reason, the Applicant respectfully requests withdrawal of the Examiner’s rejection and allowance of these claims.

For the foregoing reasons, Applicant respectfully requests allowance of the pending

claims and that a timely Notice of Allowance be issued in this case.

Respectfully submitted,

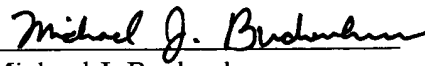

Michael J. Buchenhorner
Reg. No. 33,162

Date: May 13, 2005

HOLLAND & KNIGHT LLP
Holland & Knight LLP
701 Brickell Avenue, Suite 3000
Miami, FL 33131
(305) 789-7773 (voice)
(305) 789-7799 (fax)

Certificate of First-Class Mailing

I hereby certify that this Amendment and Response to Office Action, and any documents referred to as attached therein, are being deposited with the United States Postal Office with sufficient postage as first-class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450.


Michael J. Buchenhorner

Date: May 13, 2005

2831396_v1